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Mary Cannon t/a Enviro-Tech and Laborers' Local 332, Laborers' International Union of North America, AFL-CIO. Case 4-CA-33146, 4-CA-33227

September 22, 2005

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On September 30, 2004, the Board issued a Decision and Order¹ that, among other things, ordered the Respondent to make whole discriminatees Phil Burton, Joseph Campbell, Darnell Coulbourne, and Bryan Smith for any loss of earnings and benefits they may have suffered as a result of the Respondent's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act. On January 4, 2005, the United States Court of Appeals for the Third Circuit entered its judgment enforcing in full the Board's Order.²

A controversy having arisen over the amounts of backpay due the discriminatees, on June 29, 2005, the Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order. The compliance specification notified the Respondent that it should file an answer by July 20, 2005, complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification,³ the Respondent failed to file an answer.

By letter dated July 21, 2005, the Regional Attorney advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by July 27, 2005, a motion for default judgment would be filed pursuant to Section 102.56 of the Board's Rules and Regulations, a copy of which was enclosed. The Respondent did not thereafter file an answer.

¹ 343 NLRB No. 15.

² 04-4395.

³ The compliance specification was sent to the Respondent at the Respondent's regular place of business by certified mail. As indicated below, however, the Respondent may not have claimed this item. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited there.

In a letter dated July 28, 2005, the Regional Attorney reminded the Respondent of the aforementioned July 21 letter, and advised the Respondent that on July 27, 2005, the Regional Office "received information that may show that you have not claimed the certified mail containing the Compliance Specification." Accordingly, the Regional Attorney enclosed with the July 28 letter a copy of the compliance specification and a copy of the July 21, 2005 letter, with Section 102.56 of the Rules attached. Both the July 21 letter and the July 28 letter and its enclosures were sent by regular mail to the same address used on June 29, 2005, when the compliance specification was originally sent to the Respondent.⁴ The July 28 letter informed the Respondent that unless its answer was filed by August 8, 2005, a motion for default judgment would be filed.

On August 12, 2005, the Acting General Counsel filed with the Board a motion for default judgment, with exhibits attached. On August 18, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the motion and in the compliance specification are therefore undisputed.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Default Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order the Respondent to pay those amounts

⁴ The Acting General Counsel has attached to his motion an affidavit signed by the Respondent, which shows that the address used by the Region is accurate and current. In any event, the failure of the Postal Service to return documents sent by regular mail indicates actual receipt. See, e.g., *I.C.E. Electric*, supra.

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to the discriminatees, plus interest accrued on said amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Mary Cannon t/a Enviro-Tech, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:

Phillip Burton	\$ 4,510.10
Joseph Campbell	\$ 3,597.75
Darnell Coulbourne	\$ 2,759.76

Bryan Smith	\$ 2,927.68
TOTAL BACKPAY:	\$13,795.29

Dated, Washington, D.C. September 22, 2005

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD